

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

RAMONE RAMIREZ,

Plaintiff,

v.

ERIE COUNTY PRISON, et al,

Defendants.

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Case No. 1:23-CV-332

MEMORANDUM ORDER

This action was received by the Clerk of Court on November 24, 2023. The matter was assigned and referred to Chief United States Magistrate Judge Richard A. Lanzillo, for report and recommendation in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrate Judges.

Plaintiff, a practicing Muslim, alleged that Defendants at the Erie County Prison where he was incarcerated unlawfully burdened his right to exercise his religion in violation of the RLUIPA, 42 U.S.C. § 2000, and the First Amendment, and violated his right to procedural due process under the Fourteenth Amendment. Named as Defendants are: Erie County Prison, Deputy Warden Holman, and Counselor Heather Martin.

In response to the complaint, Defendants moved to dismiss. ECF No. 12. On October 23, 2024, Chief Magistrate Judge Lanzillo issued a Report and Recommendation recommending that Defendants' motion to dismiss be granted. ECF No. 21. More specifically, Judge Lanzillo recommended that: (1) Plaintiff's RLUIPA claim and his Fourteenth Amendment due process claim be dismissed with prejudice because the defects in these claims cannot be cured by amendment of the complaint; and (2) Plaintiff's First Amendment free exercise claim be

dismissed without prejudice with leave to file an amended complaint. To date, no objections have been filed.

“If a party objects timely to a magistrate judge's report and recommendation, the district court must ‘make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made.’” *EEOC v. City of Long Branch*, 866 F.3d 93, 99 (3d Cir. 2017) *quoting* 28 U.S.C. § 636(b)(1). Regardless of whether timely objections are made, district courts may accept, reject, or modify—in whole or in part—the magistrate judge's findings or recommendations. 28 U.S.C. § 636(b)(1); Local Rule 72(D)(2).

After *de novo* review of the complaint and filings in this case, together with the report and recommendation, the following order is entered:

AND NOW, this 21st day of November 2024;

IT IS HEREBY ORDERED that the motion to dismiss [ECF No. 12] be granted. Plaintiff's RLUIPA and Fourteenth Amendment claims are dismissed with prejudice and Plaintiff's First Amendment free exercise claim is dismissed without prejudice.

IT IS FURTHER ORDERED that the report and recommendation of Chief Magistrate Judge Lanzillo, issued on October 23, 2024 [ECF No. 21] is adopted as the opinion of the court.

FINALLY, IT IS ORDERED that Plaintiff may file an amended complaint consistent with the Report and Recommendation and this Order before December 10, 2024. If Plaintiff fails to file an amended complaint, Plaintiff's First Amendment free exercise claim will be dismissed with prejudice.


SUSAN PARADISE BAXTER
United States District Judge